

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CECIL B. CLARK and U.S. POSTAL SERVICE,
OAKWOOD STATION, West Covina, CA

*Docket No. 02-885; Submitted on the Record;
Issued September 17, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
WILLIE T.C. THOMAS

The issue is whether appellant has met his burden of proof in establishing that he sustained a recurrence of disability.

On March 10, 1992 appellant, then a 56-year-old letter carrier, was standing at his case when he became unconscious and fell. The Office of Workers' Compensation Programs initially denied appellant's claim on the grounds that he had an idiopathic fall. In an August 19, 1993 decision, the Office vacated its prior decisions on the grounds that witnesses indicated appellant stepped on or tripped over a mailtray while he was falling. The Office accepted appellant's claim for low back strain with right S1 radiculitis.¹

On January 8, 2000 appellant filed a claim for a recurrence of disability, effective July 2, 1999. He stated that the employment injury caused a spinal disc to be displaced, pressing on a nerve. In a subsequent statement, appellant indicated that, after the employment injury, he had gradually returned to his preinjury duties. However, in July 1999, he began having pain in the area of the back that he had injured in the employment injury. In an August 4, 2000 decision, the Office denied appellant's claim on the grounds that he had not established a causal relationship between his employment injury and his recurrence of disability.

In an October 20, 2000 letter, appellant requested reconsideration. In a November 20, 2000 merit decision, the Office denied appellant's request for modification of its prior decision. In a January 1, 2001 letter, appellant again requested reconsideration. In a February 5, 2001 merit decision, the Office denied appellant's request for modification of its prior decisions.

The Board finds that appellant has not met his burden of proof in establishing that his recurrence of disability was causally related to the employment injury.

¹ Appellant contended that he sustained a head injury in his fall at work. The Office denied appellant's claim for a head injury on the grounds that the medical evidence did not establish that he had a head injury or seizure disorder due to the employment injury.

Appellant has the burden of establishing by reliable, probative and substantial evidence that the recurrence of a disabling condition for which he seeks compensation was causally related to his employment injury. As part of such burden of proof, rationalized medical evidence showing causal relationship must be submitted.²

Appellant submitted two medical reports in support of his claim for a recurrence of disability. In a September 18, 2000 report, Dr. Jacob E. Tauber, a Board-certified orthopedic surgeon, indicated that appellant had decreased sensation to pinprick over the lateral aspect of both feet. He noted pain on straight leg raising tests. Dr. Tauber reported that x-rays showed severe degenerative disc disease at L5-S1. He commented that appellant had undergone total knee replacement surgery of the right knee. Dr. Tauber diagnosed severe degenerative disc disease with sciatica and work-related aggravation. He stated that appellant had impairment in both legs due to the nerve root involvement from the degenerative disc disease. Dr. Tauber noted that appellant had diminished gastrocnemius strength bilaterally along with decreased pinprick laterally. He, however, did not discuss whether appellant's condition was specifically caused by the March 10, 1992 fall at work or whether appellant was disabled due to the effects of a recurrence of disability. Dr. Tauber's report therefore, has limited probative value.

In a December 27, 2000 report, Dr. Paul J. Papanek, a Board-certified family practitioner, stated that appellant was assigned more vigorous job duties from May to July 1999 requiring him to walk more hours a day and performing lifting between 20 and 50 pounds. He noted that appellant had a flare-up of back and knee problems after these activities. Appellant's restrictions were reduced to four hours of standing and walking per day. He was gradually returned to modified duty and returned to work eight hours a day on June 27, 2000. Dr. Papanek reported that appellant had pain in the lower back which occasionally radiated down the left leg. He diagnosed status, lower back injury, with subsequent severe disc degeneration. Dr. Papanek stated that appellant had ongoing symptoms with his lower back, dating back to the 1992 employment injury. He commented that appellant had a flare-up of lower back symptoms from May to July 1999 associated with the assignment to more vigorous work. Dr. Papanek stated, however, that he was unable to conclude that those activities caused a specific injury or even an exacerbation but were simply the occasion for more intense expression of appellant's ongoing low back pain. He noted that appellant had other exacerbations and indicated that the location and character of appellant's lower back pain had been fairly constant throughout. Dr. Papanek indicated that appellant continued to require work restrictions of no heavy lifting. He stated that the work-related activities between May and July 1999 had not changed or in any way appreciably worsened appellant's condition. Dr. Papanek commented that no significant permanent disability flow from any specific injuries during that period of time. He stated that appellant's need for work restrictions continued to date from the March 10, 1992 employment injury. Dr. Papanek therefore, related appellant's continued need for work restrictions to the employment injury and his recurrence of disability to increased work requirements for the two months prior to appellant's recurrence of disability. He, however, did not explain in physiological detail how the effects of appellant's March 10, 1992 employment injury would have caused his recurrence of disability seven years later. The reports of Drs. Papanek and Tauber have limited probative value and are insufficient to establish that appellant sustained a

² *Dominic M. DeScala*, 37 ECAB 369 (1986).

recurrence of disability beginning in July 1999 that was causally related to the March 10, 1992 employment injury.

The decision of the Office of Workers' Compensation Programs dated February 5, 2001 is hereby affirmed.

Dated, Washington, DC
September 17, 2002

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member